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WHY RAILROAD REGULATION HAS FAILED

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THE situation of the railways of the United States at the present moment, as developed in these discussions during the last few days, is very easily summarized, and in very few words.

On two days' notice, at the end of 1917, the owners of the properties were expropriated in the face of a great national emergency which, under the conditions then existing, undoubtedly made that expropriation necessary. For the two years that have ensued they have been managed by public officers and with this result, that the Government of the United States has sustained a heavy loss each year through the insufficiency of the revenues to make up the expenses which the Government incurred; a thousand millions of dollars have been added to the wages-expense of the railroads; wages have been raised as though there were a bottomless pocket from which to draw the funds necessary to meet them. The properties have been—owing to exigencies that probably could not have been avoided—undermaintained, and are no longer in the excellent condition in which they were when taken over. All expenses of operation have gone up, not only through wages, but through the greater cost of all the materials and supplies necessary for operation.

Now that the railways are to be handed back to the owners and, under these conditions, they ask a guarantee for the short period of six months in order that they may have time to adjust themselves to the new conditions and to develop and restore the efficiency which they had before their organizations were destroyed, before the properties were taken out of the hands of their proper officers, those selected by the security owners. This guarantee is more necessary in the interest of general industrial stability and public welfare, than in that of any railway or any group of investors in railway securities.

It seems to be admitted, without qualification, that most of the regulation which we had up to the end of 1917, when this happened, was not wholly successful. My friend, Professor Johnson, suggests that we should have a transportation board. I take it

that this board is to regulate the Interstate Commerce Commission. I wonder who would regulate the transportation board and how soon regulation of the transportation board would become necessary? "Big fleas have little fleas to bite 'em and so on ad infinitum."

We commenced this form of regulation in 1887 with a very modest attempt; a law depending principally on publicity, declaring the principles of the common law that there shall be no unjust discrimination and no excessive rates; forbidding pooling, that is attempting to enforce competition, and enacting, as perhaps its most rigorous provision, the "long and short-haul" clause, but partly subject to dispensing power on the part of the Commission and not enforceable at all except under substantially dissimilar circumstances and conditions.

Of course that statute, as everybody knows, was a compromise. No one really wanted an Interstate Commerce Commission at that time. The advocates of drastic regulation proposed a measure which would contain hard and fast rules that would have to be obeyed, and the Commission was inserted as a compromise between those who wanted very drastic regulation and those who did not want any regulation at all. That act was amended in 1889; in 1891; in 1893, when we obtained the act which permitted the United States to compel testimony from persons who claimed that their testimony might be self-incriminatory.

In 1903 we had the Elkins Law and the Expedition Act; in 1906 the Hepburn Law which, for the first time, conferred real rate-making power upon Federal officers, and in 1910 we obtained the regulation which finally made operation of the railroads during an emergency impossible—the statute giving the Interstate Commerce Commission power to suspend changes in rates, thus making it impossible promptly to adjust rates to changed conditions.

That act, of course, had its natural result. The fall in the value of money which had commenced in 1896 and gone forward very rapidly up to 1914, the beginning of the war, became very rapid in 1914, and much more rapid after 1915, and rate schedules to which the railroads were tied partly by statute and partly by custom, became totally inadequate under the situation thus developed. The money which they received was measured in depreciated currency and was insufficient, and the act of 1910 made it impossible for them to correct that situation.

Consider this contrast. Our fathers went through the Civil War, a war which for four years made drains upon the man and money power of this Nation infinitely greater than anything that happened to us during the twenty months of our participation in the European war, months that succeeded our period of wonderful prosperity while not engaged in the great war. Yet during the Civil War no railroad not in the immediate track of hostilities had to be or was taken over by the Government. There was then infinitely greater need for railways for the prompt movement of troops. There was infinitely greater need of going to the money market and getting the last cent that market could supply, but it was not necessary to take over the railroads. Has any one any doubt why it was necessary in 1917 to take them over? Because, although the power of the President of the United States could take these properties into the hands of the Government, the power of the President of the United States could not direct the Interstate Commerce Commissioners to grant a speedy and rapid increase in rates and thus to permit precisely the sort of adjustment that was made all through the Civil War.

During the Civil War period the railroads adjusted their rates, almost daily, to the depreciated value of the currency in which they were paid. During the war through which we have just passed, no such power existed and in order that the Government of the United States might have ready recourse to the money markets, in order that failures of railroads to pay interest on their bonds should not create a situation which would make it impossible for the United States to borrow—it would greatly increase the difficulty of financing the war—it was necessary to take them over. They weren't taken over for any other reason at all. There was no question of inefficiency. At the end of 1917 the railroads were carrying more freight and carrying it better and performing all the services for which they existed with higher efficiency than at any other time in the history of those properties. There was no reason for the expropriation of their owners except the financial reason.

Now the question is, whether we are to go back, at this period, to the same form of regulation which we have had, which produced those particular results and which, if we go back to it, will leave the railroads forever in the condition of being unable to respond to any great national emergency, **not through** any lack of efficiency on the part of the men who operate the railroads and

have direct responsibility for their operation but because the Government of the United States has tied those men hand and foot and they are unable to make the price adjustments which every other business industry—except the regulated industries in this country—is able to make.

For thirty years I have lived in the midst of this regulation, a close and a constant witness of the misadventures of the legislative attempts which I have very briefly attempted to review. Every failure and every inadequacy of that legislation has been an argument for more legislation along the same line. No failure, no inadequacy, has ever been advanced as an argument for abandoning the plan, or for changing or modifying the plan, but every failure has been an excuse for more action, and more drastic action, along the same precise line. Thus every false step has led to another equally false and, continuously, we have gone further in a wrong direction. Therefore, without forgetting any aphorism that you may think applicable, I wish now to ask whether mistakes must forever be reasons for more mistakes?